

IN THE MATTER between **MICHELE LETOURNEAU**, Applicant, and **SHELTER CANADIAN PROPERTIES LTD.**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **YELLOWKNIFE, NT.**

BETWEEN:

MICHELE LETOURNEAU

Applicant/Tenant

- and -

SHELTER CANADIAN PROPERTIES LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for loss of full enjoyment of the rental premises in the amount of two thousand nine hundred ninety dollars and sixteen cents (\$2990.16). The respondent shall pay the applicant an additional twenty nine dollars and three cents (\$29.03) for each day after August 5, 2009 until the damage to the premises is repaired or the tenancy agreement between the parties is terminated.

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of August, 2009.

Hal Logsdon
Rental Officer

IN THE MATTER between **MICHELE LETOURNEAU**, Applicant, and **SHELTER CANADIAN PROPERTIES LTD.**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

MICHEL LETOURNEAU

Applicant/Tenant

-and-

SHELTER CANADIAN PROPERTIES LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: August 5, 2009

Place of the Hearing: Yellowknife NT

Appearances at Hearing: Michel LeTourneau, applicant
Darin Ryden, representing the respondent

Date of Decision: August 25, 2009

REASONS FOR DECISION

The style of cause of the application does not match the legal name of the respondent. The order shall reflect the legal name of the landlord, Shelter Canadian Properties Ltd.

On May 14, 2009 there was a sewage back up in the premises causing raw sewage to overflow into much of the first floor of the two story premises. The respondent retained a contractor who removed most of the carpeting and other flooring leaving only a bare sub-floor. Photographs of the premises indicate that most or all of the applicant's personal belongings have been removed to storage or to the second floor of the premises and fixtures have been removed from the downstairs bathroom.

The respondent has not served any notice on the applicant or filed an application seeking termination due to frustration of the tenancy agreement. Although it appears that the repairs may require vacant possession and a building permit, the respondent has not filed for termination pursuant to section 59 of the *Residential Tenancies Act*. The applicant has not sought termination of the tenancy agreement through an order or by mutual agreement but has given notice to terminate the tenancy agreement effective August 31, 2009. The applicant seeks compensation for loss of full enjoyment of the premises.

The applicant has remained in possession of the premises and has paid the full amount of the rent due. The monthly rent for the premises is \$1800. The applicant stated that her family has had to

essentially live on the second floor of the premises and has for all intents and purposes, lost the use of the first floor living area. The applicant stated that she has proposed to the respondent that the monthly rent be reduced by 50% to reflect her loss of full enjoyment of the premises but she has not received a reply from the landlord.

There is no evidence that the sewage back-up was the result of the landlord's negligence or any failure of the landlord to maintain the premises. However, the premises, at least the main floor, have been rendered practically uninhabitable by the incident and the premises have remained in that condition for almost three months. Section 30 of the *Residential Tenancies Act* obligates a landlord to maintain rental premises in a good state of repair and fit for habitation.

30.(1) A landlord shall

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

In my opinion, notwithstanding the cause of the damages, a landlord is obligated to make repairs in a reasonable time unless they were caused by the negligence of the tenant. In this matter, it appears little has been done except for the initial clean up and this has deprived the applicant of her full enjoyment of the premises.

In my opinion the applicant is entitled to a 100% abatement of rent from the time of the incident

to May 31, 2009. During this time, due to the clean up of the raw sewage in the premises, I am satisfied that the premises were completely uninhabitable. From June 1, 2009 to date, I believe the tenant is entitled to a 50% abatement of rent. While the applicant could have sought the termination of the tenancy agreement by order, she has chosen not to do so, and has continued to occupy the premises. However, the evidence supports that only 50% of the premises are habitable.

I find the respondent in breach of their obligation to repair the premises and find reasonable compensation to the date of the hearing to be \$2990.16 calculated as follows:

May 14-31 @ 100% abatement	\$1045.00
June/09 @ 50%	900.00
July/09 @ 50%	900.00
August 1-5 @ 50%	<u>145.16</u>
Total	\$2990.16

As the repairs remained outstanding at the time of the hearing, the applicant is also entitled to continuing compensation of \$29.03 for each day until the repairs are completed or until the tenancy agreement is terminated.

An order shall issue requiring the respondent to pay the applicant compensation of \$2990.16 and an additional \$29.03 for each day the repairs remain unfinished or until the tenancy agreement is terminated.

Hal Logsdon
Rental Officer